

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-216901 **DATE:** August 19, 1985
MATTER OF: South Central Bell Advanced Systems

DIGEST:

1. GAO denies protest of improper award to an offeror whose proposal was inconsistent on its face with material solicitation requirement because protester was not prejudiced by agency action.
2. GAO denies protest alleging noncompliance with mandatory technical requirements when successful technical proposal states that awardee will meet the requirements and agency properly evaluated the proposal.

South Central Bell Advanced Systems protests the award to Northern Telecom, Inc. (NTI) of a lease with option to purchase a telephone system at Arnold Air Force Station, Tennessee. South Central Bell alleges that the NTI proposal, submitted in response to request for proposals (RFP) No. F11624-84-R-0001, did not meet several mandatory requirements of the solicitation.

We deny the protest.

Background

The RFP requested offers for three procurement options--lease, purchase, and lease with option to purchase. All options were to cover design, installation, testing, and maintenance of the telephone system. The RFP provided that the system must be engineered and furnished in accordance with both the Statement of Work and the Air Force Equipment Performance Specification for a Base Telephone System (EPS-82-018). The solicitation further stated

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that award would be based on technical factors, life cycle costs, and management/personnel considerations.

The Air Force received five offers on June 14, 1984. It conducted discussions with each offeror and, after receiving best and final offers, determined that those of South Central Bell and NTI were technically acceptable. On August 30, the Technical Proposal Evaluation Board for the procurement presented a summary of its findings to the Air Force official responsible for selecting the telephone system contractor. In that report and in the contracting officer's negotiation memorandum of September 11, the South Central Bell proposal was rated slightly higher than the NTI proposal with respect to management/personnel considerations because of risk attributed to NTI's schedule management system. With respect to technical evaluation factors, the two proposals appear to have been considered essentially equal. On the other hand, the South Central Bell best and final price proposal, \$5,839,099 for lease with option to purchase, was substantially higher than NTI's price of \$4,512,405 for the same option. On September 28, 1984, the Air Force awarded a lease with option to purchase contract to NTI. From our review of the procurement record, it appears that the Air Force selected NTI primarily because of the difference between its price and the protester's.

South Central Bell's Protest

Both South Central Bell and NTI proposed to include digital switches manufactured by NTI in their telephone systems. South Central Bell states that, as an authorized sales agent for NTI, it sought the assistance of NTI engineers in conducting computer-aided engineering configurations to determine a suitable switch for the Arnold Air Force Station system. As a result of those tests, South Central Bell concluded that an NTI digital switch that it had considered including in its proposal, model SL-1XN, had insufficient capacity to meet several Air Force requirements listed in the solicitation. Consequently, the firm proposed a larger and more expensive NTI switch, model SL-100. NTI, on the other hand, proposed the model SL-1XN digital switch that South Central Bell had rejected as too small.

The protester attributes the approximately \$1.3 million difference in price between NTI's proposal and its own to the higher cost of the switch that it proposed and

contends that the SL-1XN switch proposed by NTI cannot meet the requirements of the RFP.^{1/}

In considering a protest of this nature, we do not reevaluate technical proposals or substitute our judgment for that of the agency. We will not disturb an agency's determination of the technical adequacy of a proposal absent a clear showing that the determination was unreasonable or was otherwise in violation of procurement statutes and regulations. Furthermore, the protester has the burden of affirmatively proving its case, and mere disagreement with a technical evaluation does not satisfy this requirement. A.B. Dick Co., B-211119.3, Sept. 22, 1983, 83-2 CPD ¶ 360, aff'd on reconsideration, B-211119.5, Apr. 17, 1984, 84-1 CPD ¶ 424.

A. Speed Calling Capability

Paragraph 3.1.3.10.3 of the Statement of Work requires that 50 percent of the lines have capability for individual speed calling. This feature allows an individual subscriber to select a list of numbers that can be called by dialing an abbreviated code. South Central Bell asserts that the memory of the SL-1XN switch can accommodate only 254 speed calling lists of numbers. As a consequence, the individual speed calling feature is available for 254 lines, and providing this feature for 2,750 lines, 50 percent of the system maximum, would exhaust the available memory of the system.

During discussions with the Air Force, NTI stated that the various line feature requirements "are easily met and complied with." This broad statement is, however, inconsistent with the NTI proposal. With regard to the description of the speed calling feature in paragraph 3.3.3.2 of the Equipment Performance Specification, the NTI proposal stated that individual speed calling can be provided for a maximum of 255 lines for each telephone system.

^{1/} In addition, South Central Bell questioned the technical acceptability of the proposal submitted by AT&T Information Systems. AT&T's proposal was found technically unacceptable by the Air Force and this finding was not protested by AT&T. Consequently, AT&T is not in line for award, and we need not consider South Central Bell's protest in this regard.

In its report concerning the protest, the Air Force concedes that the SL-1XN switch only has sufficient memory to provide 255 individual speed calling lists. The Air Force states, however, that fewer than 250 individual speed calling lists are actually required and that the RFP overstated the requirement because of a misunderstanding about the nature of the feature. Apparently, while the agency wants 50 percent of the lines in the Arnold Air Force Station system to have access to a speed calling list, it is acceptable for separate lines to share lists of preselected numbers. As a result, the proposed NTI system with a maximum capacity of 255 speed calling lists will meet the actual needs of the Air Force. The Air Force also contends that the speed calling feature was not a "crucial" item in the procurement, and that South Central Bell and other offerors were not prejudiced because the feature can now be added to the NTI system by purchase of automatic dialing instruments for \$50 each. The Air Force states that the automatic dialing instruments cost approximately \$15 more than those proposed by NTI, and that meeting the RFP speed calling requirement would require a \$37,750 increase in NTI's price.

In negotiated procurement, any proposal that fails to conform to material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award. AT&T Information Systems, Inc., B-216386, Mar. 20, 1985, 85-1 CPD ¶ 326. It is fundamental that all offerors for government contracts compete on an equal basis. Applicable regulations require agencies to revise solicitations and give all offerors an opportunity to submit new or revised proposals if changes occur in requirements or if the proposal considered most advantageous to the government involves a departure from stated requirements. Defense Acquisition Regulation, § 3-805.4(a) and (c), reprinted in 32 C.F.R. pts. 1-39 (1983); 2/ see Corbetta Construction Co. of Illinois, Inc., 55 Comp. Gen. 201, 207-8 (1975), 75-2 CPD ¶ 144 at 8-10.

Based upon the NTI proposal and the revised Air Force technical evaluation of the SL-1XN switch, we conclude that the Air Force should not have accepted the telephone system offered by NTI since it has insufficient memory to provide the individual speed calling feature required by the RFP.

2/ The Defense Acquisition Regulation is applicable to this procurement because the RFP was issued before the April 1, 1984 effective date of the Federal Acquisition Regulation, 48 C.F.R. Chapter 1 (1984).

While the Air Force may not view the speed calling feature as "crucial," any requirement necessitating the storage of relatively large amounts of data by a telephone system is clearly material and may not be waived without providing other offerors with an opportunity to revise their proposals. On the other hand, the protester has not contested the agency's assertion that the requirement for speed calling can be met under the terms of the RFP for far less than the \$1.3 million difference between NTI's and South Central Bell's offer. South Central Bell's only response is that, if the RFP is modified to reduce the speed calling requirement to that met by NTI, a modified South Central Bell proposal would be competitive with NTI's price. We doubt that South Central Bell proposed a digital switch costing over \$1.3 million more than the one proposed by NTI solely because of a speed calling requirement that could be met for less than \$40,000 by use of automatic dialing instruments. Although the Air Force accepted a proposal inconsistent on its face with a material requirement of the solicitation, we do not believe that the protester was prejudiced and we deny the protest on this basis.

B. Grades of Service

Paragraph 3.1.3.1 of the Statement of Work requires that the initial telephone system have 3,600 main station lines, expandable to 5,500 lines. South Central Bell contends that the maximum number of lines that can be accommodated by the SL-1XN switch proposed by NTI is 5,000. Technical literature included in the NTI proposal describing the SL-1XN switch represents that the switch can accommodate more than 25,000 lines. Thus, we understand that South Central Bell is not arguing that only 5,000 lines can terminate in the switch, but that the NTI system cannot meet the grades of service (frequency of blocked or lost calls) or other traffic handling requirements of the RFP. South Central Bell also contends that the NTI system cannot meet the required grades of service because the system contains insufficient call registers, which are mechanisms for storing information about a call such as the number called, duration, and time of initiation.

In the portion of its proposal responding to each paragraph of the Statement of Work, NTI stated that it would install a system expandable to 5,500 lines. However, in another portion of its proposal, describing the system's

capacity, NTI stated that the SL-1XN switch is capable of supporting up to 5,000 lines. The Air Force questioned this discrepancy during discussions with NTI. In a written response, the company stated that its reference to 5,000 lines was a general description applicable to the most intensive switching and feature requirements. NTI stated that its proposed system could easily meet the specific capabilities required of the Arnold Air Force Station system with 5,500 lines.

NTI's initial proposal also set forth grades of service that fell below the minimum levels required by paragraph 3.5.1 of the Equipment Performance Specification for three types of telephone traffic. When questioned by the Air Force about the three exceptions during discussions, NTI stated that the proposed grades of service for the system could be "independently configured," and that the system would provide the required minimum grades of service for each type of traffic.

Thus, NTI proposed to meet the number of lines and grades of service required by the RFP and the Air Force found that the NTI system would do so. In the absence of specific evidence that NTI's system does not meet these solicitation requirements, we deny South Central Bell's protest on these bases. See Rack Engineering Co., B-214988, Sept. 10, 1984, 84-2 CPD ¶ 272.

C. Conference Calls and "Hold" Feature

Paragraphs 3.3.1.1.2 and 3.3.1.1.3 of the Equipment Performance Specification require the telephone system to permit subscribers to establish conference calls with pre-selected conferees by dialing an access code ("preset conferencing") and to set-up conferences at pre-arranged times ("meet-me conferencing"). Paragraph 3.1.3.4 of the Statement of Work specifies additional features for "meet-me" and attendant conferences. South Central Bell contends that the SL-1XN switch cannot provide these required conferencing features. NTI's proposal, however, offered to meet the "preset" and "meet-me" conferencing requirements by supplying additional specified equipment compatible with the SL-1XN switch. In answer to questions posed by the Air Force during discussions, NTI explained that the proposed system would meet the specific conferencing features described in the Statement of work.

South Central Bell has not established that, with the additional equipment offered by NTI, the NTI system cannot perform as represented by the offeror. Thus, we conclude that the NTI proposal meets the RFP specifications with regard to conferencing features.

The protester has provided one other example of a required feature that it believes establishes the insufficiency of the SL-1XN memory. This is the requirement for 5 percent of the lines to place incoming calls on hold (with an explanatory recorded message) when all facilities are busy and to distribute the calls when lines become available. South Central Bell provided no detail regarding the system memory required for this feature, and we therefore find that it did not meet its burden of establishing that the NTI proposal is deficient in this respect.

We deny the protest.

Harry R. Van Cleve
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General Counsel